IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.945 OF 2005

Citizens Co-op. Bank Ltd. ..Petitioner.
Vs.
H. V. Mane ..Respondent.

WITH
WRIT PETITION NO.948 OF 2005

Citizens Co-op. Bank Ltd. ..Petitioner.
Vs.
Devidas L. Nalawade ..Respondent.

...

Mr. A.D. Patwardhan for the petitioner.
Mr. P.M. Huddar for the respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

29th August, 2005.

P.C. :

1. Rule, made returnable forthwith. By consent of the learned counsel appearing on behalf of the parties, the matter is taken up for hearing and final disposal.

2. These two Petitions are directed against interim orders passed by the Labour Court directing reinstatement of two employees of the Petitioner at the interlocutory stage, which orders have been confirmed in revision by the Industrial Court. The

Respondent in Writ Petition 945 of 2005 was a Branch Manager working in the Sinhagad Branch of the Citizens Co-op. Bank Limited which is the Petitioner before the Court. The Respondent in Writ Petition 948 of 2005 was working as an Accounts Officer. The services of both these employees were terminated by orders dated 31st October, 2002 and 17th February, 2003 inter alia on the ground of a loss of confidence. In the first case, it was alleged that the Respondent had acted in excess of his authority in discounting certain cheques in total disregard of the directives issued by the Reserve Bank of India. It was alleged that the cheque which was discounted was not drawn on a local bank and the facility of discounting was allowed by the Respondent to a party which is stated not to have had satisfactory banking transactions with the bank. It was alleged that no powers were given to the Respondent to allow discounting of such cheques as were discounted. It was alleged that the Respondent had acted in connivance with the General Manager of the bank and that he was guilty of causing financial loss to the bank and of acting contrary to the interests of the bank. In so far as the second Petition is concerned, the allegation against the Respondent was along similar lines and it was alleged that in collusion with the Branch Manager the

Respondent had purchased/ discounted certain cheques fraudulently and with a dishonest intention caused wrongful loss to the bank. Admittedly before both the orders of termination were issued, no disciplinary inquiry was held.

3. Both the employees moved the Labour Court in applications under the Bombay Industrial Relations Act, 1946. By interim orders passed by the Labour Court reinstatement was granted to the two Respondents at the interlocutory stage. The Labour Court was of the view that the Respondents were workmen within the meaning of Section 3(13) of the Act and that since the order of termination was for a fault of misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of order, an order of reinstatement was warranted under Section 78(1)(D)(i). This order was affirmed in revision by the Industrial Court.

4. Counsel appearing for the Petitioner submitted that though no inquiry was held before the termination of the services of the Respondents, it would be open to the management in view of the well settled position to adduce evidence before the Labour Court in

support of the allegations of misconduct even assuming that the Respondents in the two petitions are workmen. The provisions of Section 78(1)(D)(i) have been held to be directory by the Supreme Court in Municipal Corporation of Greater Bombay v. The B.E.S.T. Workers (1973 Vol 26 FLR 123).

5. There is merit in the submission which has been urged on behalf of the Petitioner. The Supreme Court has held in **The Municipal Corporation, Greater Bombay v. The B.E.S.T. Workers** (supra) that the provisions contained in Section 78(1)(D) (i) are not mandatory but only directory. The Labour Court does have the power to grant relief to an employee if an order of dismissal is passed by the employer after the expiry of six months from the date when the misconduct came to the notice of the employer, if the employer has not been diligent in initiating disciplinary proceedings and if he has not been able to explain satisfactory and adequate reasons of delay in passing the order of punishment. The Supreme Court held that the provision only emphasized that the employer should be vigilant in adopting disciplinary proceedings. This would not foreclose the right of an employer to initiate action even thereafter provided he is able to

satisfy the Tribunal about the reasons in not imposing punishment within a period of six months.

6. In the present case, it has been the case of the bank that there was a fraud in the conduct of the business of the bank to which certain employees were parties and the fraud had in fact taken place with the connivance of its Branch Manager and certain other employees. To apply the six months time limit as an inflexible rule would lead to a miscarriage of justice. A fraud of the nature alleged requires an element of investigation and the marshalling of evidence which is likely to take time. In a matter such as the present, therefore, the Labour Court was clearly not justified in proceeding to grant reinstatement merely because a period of more than six months had elapsed after the date on which the bank had acquired knowledge of the alleged misconduct. The Revisional Court has been in clear error in declining to interfere with the order of the Labour Court. Orders for reinstatement at the interlocutory stage are not the rule and the exercise of such discretion must be carried out with circumspection by the Labour Court and Industrial Court. In a case such as the present, it would be open to the Petitioner to establish the charge of misconduct by leading evidence at the trial. The question as to

whether or not the Respondents are workmen is a matter which would be decided at the trial on the basis of the evidence which is adduced. But even on the assumption that the Respondents are workmen, it would still be open to the Petitioner to lead evidence on the charges of misconduct. Having regard to the allegations against the Respondents and the fact that the Petitioner is a banking institution, it would manifestly not be in the interests of justice to grant reinstatement at the interlocutory stage. Ultimately if the Respondents succeed in the application before the Labour Court, they would be entitled to press their claim for consequential reliefs and this is a matter which would be considered by the Labour Court.

7. Therefore, having regard to the aforesaid circumstances, the impugned orders are unsustainable. The orders passed by the Industrial Court on 16th September, 2004 and 20th September, 2004 in the two Petitions are accordingly quashed and set aside. The application for the grant of interim relief shall, in the circumstances, stand dismissed. The Labour Court is, however, directed to expedite the hearing of the applications and to set down a time schedule for early disposal. It has been stated before the Court that

the two applications filed by the respective employees are pending before the First and Second Labour Court respectively. Both the learned counsel are agreed in submitting before the Court that it would be in the interests of justice if they are both assigned to the same Judge so as to facilitate an expeditious disposal. The President of the Industrial Court shall, in the circumstances, issue administrative directions for clubbing of the two applications and for assignment to one Court with a view to facilitate an expeditious disposal. The Petitions are accordingly allowed in these terms. There shall be no order as to costs.